

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

RICHARD ROGERS, individually and on
behalf of similarly situated individuals,

Plaintiff,

v.

BNSF RAILWAY COMPANY,

Defendant.

Case No. 1:19-cv-03083

Honorable Matthew F. Kennelly

**DEFENDANT BNSF RAILWAY COMPANY'S
MOTION FOR LEAVE TO FILE EXHIBITS UNDER SEAL**

Pursuant Local Rule 26.2, Defendant BNSF Railway Company ("BNSF") respectfully moves this Court to enter an Order granting BNSF leave to file under seal certain exhibits to BNSF's Offer of Proof filed herewith. BNSF does not seek to seal its Offer of Proof. In support of this motion, BNSF states:

1. On January 25, 2020, the Court entered an Agreed Confidentiality Order that permits the parties to designate documents and testimony produced in discovery as "Confidential Information," but it does not permit the parties to automatically file documents marked Confidential Information under seal without first seeking leave of Court. (ECF No. 47).
2. The filing of information under seal must separately comply with Local Rule 26.2.
3. BNSF will file its Offer of Proof herewith.
4. BNSF seeks to file the following three exhibits to BNSF's Offer of Proof under seal, pursuant to Local Rule 26.2 and the Agreed Confidentiality Order entered in this case:

(a) Exhibit 1-3 is a copy of the August 1, 2018 Intermodal Facility Services Master Agreement between BNSF and Remprex, LLC (“Remprex”) attached to the Declaration of BNSF employee Jeff Briggs. This agreement contains confidential and sensitive information about to the security and safety operations related to the Automatic Gate System at BNSF’s intermodal facilities. The agreement also contains confidential and sensitive commercial information related to BNSF’s contract terms, pricing, and negotiations for services. BNSF designated this document as “Confidential.” BNSF does not seek to file under seal any other portion of Mr. Briggs’ declaration.

(b) Exhibit 5 is internal presentation from Remprex produced by BNSF in discovery. The documents contain confidential information, including confidential security and operational details related to the Automatic Gate System. These non-public documents depict the specific procedures employed by Remprex to provide security at BNSF’s intermodal facilities using the Automatic Gate System. BNSF designated these documents as “Confidential.”

(c) Exhibit 6 is an internal BNSF presentation detailing BNSF’s intermodal hub operations produced by BNSF in discovery. The document contains confidential information, including confidential security and operational details related to the Automatic Gate System. These non-public documents depict the Automatic Gate System procedures and confidential and discuss internal business decisions related to the Automatic Gate System. BNSF designated these documents as “Confidential.”

WHEREFORE, Defendant BNSF Railway Company respectfully requests this Court enter an Order granting BNSF leave to file under seal Exhibits 1-3, 5, and 6 to its Offer of Proof.

Dated: October 11, 2022

Respectfully submitted,

BNSF RAILWAY COMPANY

By: /s/ Elizabeth Herrington

By Its Attorneys

Elizabeth Herrington
Tinos Diamantatos
Gregory Fouts
Alborz Hassani
Benjamin Kabe
MORGAN, LEWIS & BOCKIUS LLP
110 North Wacker Drive, Suite 2800
Chicago, IL 60606-1511
Telephone: +1.312.324.1000
Facsimile: +1.312.324.1001
beth.herrington@morganlewis.com
tinos.diamantatos@morganlewis.com
gregory.fouts@morganlewis.com
al.hassani@morganlewis.com
benjamin.kabe@morganlewis.com

Andrew S. Tulumello
Claire L. Chapla (*admitted pro hac vice*)
Robert Niles-Weed (*admitted pro hac vice*)
WEIL, GOTSHAL & MANGES LLP
2001 M Street, NW, Suite 600
Washington, DC 20036
Telephone: +1.202.682.7000
drew.tulumello@weil.com
claire.chapla@weil.com
robert.niles-weed@weil.com

*Counsel for Defendant BNSF Railway
Company*

CERTIFICATE OF SERVICE

I, Elizabeth Herrington, certify that on October 11, 2022, I caused a copy of the foregoing to be served upon all counsel of record via the Court's CM/ECF system.

/s/ Elizabeth Herrington _____

Elizabeth Herrington